REMARKS

The Office Action mailed, December 16, 2005 considered claims 1, 2, 4-10, 16-18, 20-25, 32 and 33. Claim 1, 2, 4, 5, 7-10, 16-18, 20-25, 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward et al (US 6,756,997) (hereinafter "*Ward*") in view of Marsh et al (US 6,208,799) (hereinafter "*Marsh*"). Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ward* in view of *Marsh* in further view of Vallone et al (6,642,939) (hereinafter "*Vallone*").[1] Claims 1, 4, and 22 have been amended and claim 9 cancelled such that claims 1, 2, 4-8, 10, 16-18, 20-25, 32 and 33 remain pending of which claims 1 and 22 are the only independent claims.

Embodiments of the present application illustrate how two or more television programs can be selected to be recorded at a set top box even when those programs conflict due to an overlap in time. The conflict does not need to be resolved at the time that any of the programs are selected, but rather can be resolved at a later time and in response to a subsequent event. Such events might include the addition of one or more tuners at the set top box, changes in program scheduling, the non-transmission of one of the selections, and the like.

Claim 1 recites for example "*continuing to store,* at the system, the information specifying that the user has selected both the first program and the second program to be recorded at the first broadcast time and the second broadcast time respectively *which are at least partially coinciding,* without requiring a user to resolve the conflict, wherein the continued storage *preserves the possibility* of scheduling the recording of the second program during at least a portion of the second broadcast time in response to a subsequent event."

Claim 22 is more specific in that it recites "*continuing to store,* at the system, information specifying that input has received selecting both the first program and the second program to be recorded at the first broadcast time and the expected second broadcast time respectively *which are at least partially coinciding*" and "upon determining that at least one of an actual start time and an actual end time of an actual second broadcast time differs from the respective expected start time and expected end time, determining whether both the first program and the second

---

[1] Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

program can be recorded as a result of the actual broadcast time and the first broadcast time not coinciding and, if so, recording both the first program and the second program using the recording apparatus."

These features are simply not illustrated by *Ward* or *Marsh* alone or in combination.

As pointed out previously in the last office action, *Ward* does not demonstrate that information continues to be stored at the system preserving the possibility of scheduling the recording of the second program during at least a portion of the second broadcast time in response to a subsequent event. Rather *Ward* states for example that "[t]he EPG will require that the viewer revise the record instructions to eliminate the conflict." Col. 12, lines 53-55. Thus, in this example, there is no need, nor is it disclosed or suggested, to continue to store the information recited by claim 1. Alternatively, *Ward* states that "the EPG automatically 'decides' to override the 'regularly record' instruction and will record the 'one occurrence' program with no further intervention by the viewer." Col. 12, lines 61-65. Again, there is no need, nor is it disclosed or suggested, to continue to store the information recited by claim 1 as any conflict has been resolved. In yet another alternative *Ward* illustrates that the EPG allows the viewer to select a later occurrence of a conflicting program to resolve the conflict. Col. 13, lines 1-5. In other words, a program is recorded at a different time than the conflicting time. This is in direct contrast to what is recited by the claim 1, which recites "a second broadcast time that at least partially coincides with the first broadcast time" and "wherein the continued storage preserves the possibility of scheduling the recording of the second program *during at least a portion of the second broadcast time* in response to a subsequent event." In other words, claim 1 recites functionality that allows the second program to be recorded at the original second broadcast time selected by the user (in response to a subsequent event) rather than at a later time. Additionally, this third example demonstrated by *Ward* does not include continuing to store the information recited by claim 1 but rather schedules one of the programs at a different time than originally selected by the user. In direct contrast, claim 1 recites "wherein the continued storage preserves the possibility of scheduling the recording of the second program *during at least a portion of the second broadcast time* in response to a subsequent event." The second broadcast time is recited as "at least partially coincid[ing] with the first broadcast time" rather than being at a different non-coinciding time.

Application No. 09/650,801
Amendment "D" dated January 24, 2006
Reply to Office Action mailed December 16, 2005

With respect to claim 22, claim 22 now recites "continuing to store, at the system, information specifying that input has received selecting both the first program and the second program to be recorded at the first broadcast time and the second broadcast time respectively which are at least partially coinciding...." As explained in conjunction with the arguments for the patentability of claim 1, *Ward* simply does not illustrate these elements.

In addition, while *Ward* discloses that recording time can be adjusted to compensate for changes in programming time such as when a sports event runs over time, *Ward* is silent on changing of recording time allowing a first and second program that were originally coinciding to be recorded as a result of the actual start and end time being changed such that the actual broadcast time and the first broadcast time is not coinciding, as recited by claim 22. Rather, as discussed above in conjunction with claim 1, conflict resolution in *Ward* results in the removal of one of the programs by user interaction, automatic intervention, or rescheduling recording one of the programs at a later time. Claim 22, in direct contrast, allows for recording of originally overlapping programming by recognizing changes in recording start and/or end time. This type of functionality of resolving overlaps due to a change in program time simply is not taught or suggested by *Ward*.

Marsh does not compensate for what is not taught by *Ward*, but rather reinforces the teachings of *Ward*. As a preliminary matter, the applicants would like to point out that the portions of *Marsh* cited by the Examiner do not address the elements that are missing from *Ward* including "continuing to store...information specifying that the user has selected both the first program and the second program." Rather, the portions cited by the Examiner (Figures 9a and 9B, Col. 2, line 5, and Col. 13, lines 17-43) are directed to recording a later instance of a program. This functionality is already discussed in *Ward* at *Ward*, Col. 12, line 67 – Col. 13, line 5. Thus, the portions of *Marsh* cited by the Examiner add no additional relevant teachings to *Ward*.

In the portions of *Marsh* not discussed by the Examiner, *Marsh* discusses conflicts where programs overlap, however none of the conflict resolution techniques disclosed by *Marsh* disclose "continuing to store, at the system, the information specifying that the user has selected both the first program and the second program to be recorded at the first broadcast time and the second broadcast time respectively which are at least partially coinciding...," but rather simply show the same conflict resolution techniques already discussed in *Ward*. In Figure 3, *Marsh*

Page 11 of 13

shows that when a conflict exits (block 39) a user-alert message is sent to a TV screen (block 37). As described at col. 7, lines 30-34, this alert allows the user to cancel one of the overlapping programs. Thus, *Marsh* does not disclose "continuing to store...information specifying that the user has selected both the first program and the second program" so as to "preserve the possibility of scheduling the recording of the second program during at least a portion of the second broadcast time in response to a subsequent event," as is recited by claim 1, but rather requires that one of the overlapping programs be cancelled.

Similarly, Figure 6 illustrates that when a conflict exists (block 71) that a VCR-Record-Timer is cleared (block 74 and 75) and that a user alert message is sent (block 76). Col. 10. lines 20-34 further clarify that the VCR-record-timer is cleared, essentially canceling one of the conflicting programs. Thus, instead of "continuing to store...information specifying that the user has selected both the first program and the second program" so as to "preserve the possibility of scheduling the recording of the second program during at least a portion of the second broadcast time in response to a subsequent event," one event is simply cancelled. *Marsh*, alone or in combination with *Ward*, simply does not teach "continuing to store...information specifying that the user has selected both the first program and the second program" as is recited by both of the independent claims, claims 1 and 22, of the present application. Rather, when a conflict is detected, the teachings of *Marsh* (and *Ward*) indicate that one of the conflicting items is moved or cancelled. This is in direct contrast with what is recited by the claims of the present application.

Vallone does not compensate for the deficiencies of *Ward*. *Vallone* is only cited to demonstrate the use of multiple tuners in a system.
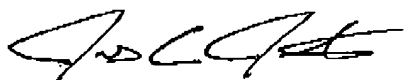
Furthermore, although the foregoing remarks have been focused primarily on the independent claims, it will be appreciated that all of the rejections and assertions of record with respect to the independent claims, as well as the dependent claims, are now moot, and therefore need not be addressed individually. However, in this regard, it should be appreciated that Applicant does not necessarily acquiesce to any assertions in the previous Office Action that are not specifically addressed above, and hereby reserves the right to challenge those assertions at any appropriate time in the future, should it arise, including any official notice.

Application No. 09/650,801
Amendment "D" dated January 24, 2006
Reply to Office Action mailed December 16, 2005

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this _24_ day of January, 2006.

Respectfully submitted,

RICK D. NYDEGGER
Registration No. 28,651
JENS C. JENKINS
Registration No. 44, 803
J. LAVAR OLDHAM
Registration No. 53,409
Attorneys for Applicant
Customer No. 47973

RDN:JCJ:ppa
PPA0000002279V001

Page 13 of 13